

AGAZARIAN
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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-149986

DATE: November 23, 1977

MATTER OF: Department of Agriculture - Overtime
Compensation; Hours Worked in Excess
of 8-Hour Day

- DIGEST: 1. In 42 Comp. Gen. 195 at 200 (1962) it was held, in regard to overtime of wage board employee under 5 U.S.C. 673c (now 5 U.S.C. 5544) that agency could regard any 24-hour period as "day." That holding is applicable to General Schedule employees since provisions of 5 U.S.C. 5544 and 5 U.S.C. 5542 are comparable.
2. In 32 Comp. Gen. 191 (1952) it was held that employees who worked two shifts which began within same 24-hour period in basic workweek could be paid for 2 days' work at basic rate. That decision is no longer to be followed since 5 U.S.C. 5542 provides that hours in excess of 8 in day are overtime work. Therefore, Department of Agriculture employees whose workweek include two shifts on Monday, 0001 to 0830, and 2000 to 0430, are entitled to overtime compensation for hours worked in excess of 8 hours in 24-hour period agency treats as day.

This matter concerns a request for an advance decision by Mr. J. Paul Bolduc, Assistant Secretary for Administration, Department of Agriculture, concerning the impact of the overtime provisions of 5 U.S.C. 5542 (Supp. I, 1971) on hours of duty which have been adopted for some of the Department's employees. The workweek before us is as follows:

Monday	0001 to 0830
Monday	2000 to 0430
Tuesday	2000 to 0430
Wednesday	2000 to 0430
Thursday	2000 to 0430

The submission indicates that the Department considers that the employees involved work two shifts within a midnight to midnight time frame on Monday. It cites 42 Comp. Gen. 195 at 200 (1962)

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as authority to treat any 24-hour period as a day. In addition the submission points out that 32 Comp. Gen. 191 (1952) holds that where an employee works two shifts within the same 24-hour period in the basic workweek, the employee may be paid for 2 days' work at the regular rate of basic pay.

In 42 Comp. Gen. 195, supra, concerning the interpretation of the word "day" as applied to overtime of wage board employees under 5 U.S.C. 673c (now 5 U.S.C. 5544), we held that ordinarily the calendar day, midnight to midnight should be used. However, we also held that when that was not administratively feasible, the law permits any 24-hour period to be treated as a "day." The provisions of 5 U.S.C. 5544 are comparable to those in 5 U.S.C. 5542(a). B-163730, April 25, 1968. Thus, we would have no objection if the Department wished to adopt a 24-hour period other than midnight to midnight as a "day" now in effect with regard to the employees involved should they be under the General Schedule.


Concerning entitlement to overtime, our decision 32 Comp. Gen. 191 (1952) was issued when the overtime compensation provision for employees under the General Schedule, 5 U.S.C. 911, now 5 U.S.C. 5542, provided that hours of work in excess of 40 hours in a workweek would be overtime work. This entitlement to overtime compensation was expanded by the enactment of subsection 404(a), Public Law 89-504, July 18, 1966, 80 Stat. 297 which amended 5 U.S.C. 911 (now 5 U.S.C. 5542(a)) to provide that hours of work in excess of 8 hours in a day would also be overtime. As amended, 5 U.S.C. 5542 (Supp. I, 1971) now provides in pertinent part as follows:

"(a) * * * hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or * * * in excess of 8 hours in a day, performed by an employee are overtime work * * *."

Accordingly, under 5 U.S.C. 5542 (Supp. I, 1971) employees are now entitled to overtime compensation for hours in excess of 8 hours within a day. Therefore, that part of 32 Comp. Gen. 191 which permits payment of basic pay to employees working two shifts in 1 day is no longer to be followed.

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In the present case the Department has used the midnight to midnight time frame as a day. Therefore, the employees of the Department who work both shifts on Mondays, 0001 to 0830 and 2000 to 0430, are entitled to overtime compensation for the hours which represent hours worked in excess of 8 hours in that day.


Deputy Comptroller General
of the United States